

### **IC 13-18-3**

#### **Chapter 3. Powers and Duties Concerning Water Pollution Control**

### **IC 13-18-3-1**

#### **Duties of board**

Sec. 1. The water pollution control board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

- (1) that is deleterious to:
  - (A) the public health; or
  - (B) the prosecution of any industry or lawful occupation; or
- (2) by which:
  - (A) any fish life or any beneficial animal or vegetable life may be destroyed; or
  - (B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

*As added by P.L.1-1996, SEC.8.*

### **IC 13-18-3-2**

#### **Adoption of rules; designation of outstanding state or national resource waters**

Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

- (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and
- (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

- (b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.
- (c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.
- (d) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.
- (e) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

(f) "Watershed" has the meaning set forth in IC 14-8-2-310.

(g) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

- (1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.
- (2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative

biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(i) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (g) and (h), including the board's conclusions concerning that information.

(j) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

(k) Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

(l) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are met.

(m) The procedures provided by rule under subsection (l) must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water

quality in the outstanding state resource water or exceptional use water:

(A) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000) based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter.

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.

(n) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(o) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

(p) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

*As added by P.L.1-1996, SEC.8. Amended by P.L.140-2000, SEC.17; P.L.1-2001, SEC.16.*

### **IC 13-18-3-2.3**

#### **Sufficiency of long term control plan; use attainability analysis**

Sec. 2.3. (a) A long term control plan, upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:

- (1) the plan provides for the implementation of cost effective control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;
- (2) the plan provides, at a minimum, for the capture for treatment of first flush;
- (3) the plan is reviewed periodically; and
- (4) additional controls are implemented as provided in section 2.4 of this chapter.

Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.

(b) When a use attainability analysis is required for a suspension of designated uses under this chapter, the department must, to the maximum extent permitted under state or federal law:

- (1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and
- (2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.

*As added by P.L.140-2000, SEC.18.*

#### **IC 13-18-3-2.4**

##### **Review of feasibility of implementing additional or new control alternatives to attain water quality standards**

Sec. 2.4. A permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards, including standards suspended under section 2.5 of this chapter. The permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The permit holder shall:

- (1) document to the department that the long term control plan has been reviewed;
- (2) update the long term control plan as necessary;
- (3) submit any amendments to the long term control plan to the department for approval; and
- (4) implement control alternatives determined to be cost effective.

Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.

*As added by P.L.140-2000, SEC.19. Amended by P.L.1-2001, SEC.17.*

#### **IC 13-18-3-2.5**

##### **Temporary suspension of designated uses and water quality criteria due to wet weather events**

Sec. 2.5. (a) Subject to the limitations of subsection (d), designated uses and associated water quality criteria are temporarily suspended on a site specific basis, for waters affected by discharges from combined sewer overflow points listed in the National Pollutant

Discharge Elimination System (NPDES) permit due to wet weather events, if:

- (1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;
- (2) the approved long term control plan is incorporated into the permit holder's NPDES permit;
- (3) the approved long term control plan:
  - (A) satisfies the requirements of section 2.3 of this chapter; and
  - (B) specifies the designated uses and water quality standards to be suspended under this section;
- (4) the permit holder:
  - (A) has implemented the approved long term control plan; or
  - (B) is implementing the approved long term control plan in accordance with the schedule approved in the long term control plan;
- (5) the permit holder is in compliance with the requirements for the operation and maintenance of its wastewater treatment facilities and combined sewer system, including its combined sewer operational plan approved by the department; and
- (6) the provisions of 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

The provisions of 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(b) Existing uses as defined in 40 CFR 131.3(e) and associated water quality criteria may be suspended only in accordance with federal law.

(c) To the extent permitted under federal law, the department shall provide a compliance schedule for attainment of water quality based limitations for discharges from combined sewer overflow points in the NPDES permit during the period when the long term control plan is being developed.

(d) A temporary suspension applies only:

- (1) to the NPDES permit holder for discharges from the permit holder's listed combined sewer overflow points; and
- (2) during the time and to the physical extent that the designated uses and water quality standards are not attained due to the discharges from the listed combined sewer overflow points, but no more than four (4) days after the date the overflow discharge ends.

(e) The board may adopt rules in accordance with IC 13-14-8 and IC 13-14-9 to amend the water quality standards to include the terms of the temporary suspension allowed by this section.

(f) The permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically, but at least every three (3) years. The permit holder shall provide all such information to the department.

(g) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the permit holder shall review information generated after the use attainability analysis was

approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The permit holder shall provide the results of the review to the department.

(h) A temporary suspension under this section may be authorized only to the extent allowed under federal law. If the department determines that information provided under this section demonstrates that uses being suspended are attainable, the department shall promptly notify the permit holder of its determination. A permit holder may appeal the department's determination under this section in accordance with IC 4-21.5.

(i) After the effective date of the determination under subsection (h), the long term control plan may be modified to achieve attainment of the previously suspended uses and associated water quality criteria. The compliance schedule and other provisions of the NPDES permit shall also be modified as necessary.

*As added by P.L.140-2000, SEC.20.*

### **IC 13-18-3-3**

#### **Operating policies**

Sec. 3. The board shall develop operating policies governing the implementation of the water pollution control laws by the department.

*As added by P.L.1-1996, SEC.8.*

### **IC 13-18-3-4**

#### **Orders; review by environmental law judge**

Sec. 4. (a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

*As added by P.L.1-1996, SEC.8.*

### **IC 13-18-3-5**

#### **Additional duties**

Sec. 5. The board shall carry out other duties imposed by law.

*As added by P.L.1-1996, SEC.8.*

### **IC 13-18-3-6**

#### **Enforcement**

Sec. 6. The water pollution control laws may be enforced under IC 13-30-3 or IC 13-14-2-6.

*As added by P.L.1-1996, SEC.8.*

### **IC 13-18-3-7**

#### **Orders to acquire, construct, repair, alter, or extend plants**

Sec. 7. The commissioner may order any person to acquire, construct, repair, alter, or extend the plants that are necessary for the disposal or treatment of organic or inorganic matter that is:

- (1) causing;
- (2) contributing to; or

(3) about to cause or contribute to;  
a polluted condition of the waters of Indiana.  
*As added by P.L.1-1996, SEC.8.*

#### **IC 13-18-3-8**

##### **Sealing of mines and wells**

Sec. 8. The commissioner may require the sealing of mines, oil and gas wells, brine wells, or any other subterranean strata that are:

- (1) causing;
  - (2) contributing to; or
  - (3) about to cause or contribute to;
- a polluted condition of the waters of Indiana.

*As added by P.L.1-1996, SEC.8.*

#### **IC 13-18-3-9**

##### **Entry upon property; purposes**

Sec. 9. The department may, through any authorized agent, enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any water of Indiana.

*As added by P.L.1-1996, SEC.8.*

#### **IC 13-18-3-10**

##### **Assistance from other state departments, agencies, or institutions**

Sec. 10. The department may call upon:

- (1) any state officer, board, department, school, university, or other state institution; and
- (2) the officers or employees of an individual entity described in subdivision (1);

for any assistance necessary to carry out the water pollution control laws.

*As added by P.L.1-1996, SEC.8.*

#### **IC 13-18-3-11**

##### **Liberal construction**

Sec. 11. Since the water pollution control laws are necessary for the public health, safety, and welfare, the water pollution control laws shall be liberally construed to effectuate the purposes of the water pollution control laws.

*As added by P.L.1-1996, SEC.8.*

#### **IC 13-18-3-12**

##### **Adoption of rules waiving requirement of submission of plans**

Sec. 12. The water pollution control board shall adopt rules providing that whenever a person submits plans to a unit concerning the design or construction of:

- (1) a sanitary sewer or public water main, if:
  - (A) a professional engineer who is registered under IC 25-31 prepared the plans;
  - (B) the unit provided for review of the plans by a qualified

engineer and subsequently approved the plans; and  
(C) all other requirements specified in rules adopted by the water pollution control board are met; or  
(2) a sanitary sewer extension for and within a subdivision, if:  
(A) a qualified land surveyor who is registered under IC 25-21.5 prepared the plans;  
(B) the subdivision is being laid out or having been laid out by the land surveyor subject to IC 25-21.5-7;  
(C) the unit provided for review of the plans by a qualified engineer and subsequently approved the plans; and  
(D) all other requirements specified in rules adopted by the water pollution control board are met;  
the plans are not required to be submitted to any state agency for a permit, permission, or review, unless required by federal law.  
*As added by P.L.104-1998, SEC.1. Amended by P.L.241-1999, SEC.1.*

### **IC 13-18-3-13**

#### **Violation of storm water runoff rules**

Sec. 13. If a violation of 327 IAC 15-5 occurs, the department shall determine which person is responsible for committing the violation. In making this determination, the department shall, if appropriate, consider:

- (1) public records of ownership;
- (2) building permits issued by local units of government; or
- (3) other relevant information.

The department's determination to proceed against a person responsible for committing a violation must be based on the specific facts and circumstances related to a particular violation.

*As added by P.L.161-1999, SEC.1.*

### **IC 13-18-3-14**

#### **Outstanding state resource water improvement fund**

Sec. 14. (a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.

(b) The outstanding state resource water improvement fund shall be administered as follows:

- (1) The fund may be used by the department of environmental management to fund projects that will lead to overall improvement to the water quality of the affected exceptional use water or outstanding state resource water.
- (2) The treasurer of state may invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.
- (3) Any interest received accrues to the fund.



(4) The expenses of administering the fund shall be paid from the fund.

*As added by P.L.140-2000, SEC.21.*